

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FRANKIE DEAN BILLINGS	§	
v.	§	CIVIL ACTION NO. 6:16cv1204
		Crim. No. 6:96cr41(1)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Frankie Dean Billings, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255, complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Billings argued that his sentence was improperly enhanced under the career offender guidelines of U.S. Sentencing Guidelines §4B1.1. He contended that the residual clause of §4B1.2(a) is unconstitutionally vague because it was identical to the residual clause in the Armed Career Criminal Act struck down in *Johnson v. United States*, 135 S.Ct. 2551, 2556-57, 192 L.Ed.2d 569 (2015).

After review of the pleadings, including the response from the Government, the Magistrate Judge issued a Report recommending that Billings' motion to vacate sentence be denied because the Supreme Court had held that the U.S. Sentencing Guidelines are advisory and thus not subject to a vagueness challenge, meaning *Johnson* did not apply to claims brought under the Guidelines. A copy of this Report was sent to Billings' last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the District Judge

of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has examined the pleadings in this cause and the Report of the Magistrate Judge and has concluded that this Report is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 10) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Movant Frankie Dean Billings is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So Ordered and Signed

Dec 18, 2017



Ron Clark, United States District Judge